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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re A.G., a Person Coming Under the
Juvenile Court Law.

CONTRA COSTA COUNTY CHILDREN
AND FAMILY SERVICES BUREAU,

Plaintiff and Respondent,

v.

DENA G.,

Defendant and Appellant.

A139212

(Contra Costa County
Super. Ct. No. J13-00082)

INTRODUCTION

Dena G. (mother) appeals from orders of the Contra Costa County Juvenile court finding the 14-year-old child was a dependent child as described by Welfare and Institutions Code section 300 and removing the child from her custody. The sole issue raised by mother is the failure of respondent Contra Costa County Children and Family Services Bureau (the Bureau) to comply with the notice requirements under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.). The Bureau concedes that ICWA notice requirements were not met. Consequently, we believe that a limited remand is required.

In light of this concession, we need not describe the underlying facts giving rise to the dependency or the bases for the court's jurisdiction and disposition orders.¹

We have reviewed the record and it is clear that despite notice that the maternal family claimed the child had Indian heritage, a finding by the court that the child “may be” an Indian child, and an order that the Bureau provide notice of the proceedings and the tribes’ right to intervene to all identified tribes, the Bureau failed to comply with ICWA. The record contains no evidence that the Bureau provided the requisite notice and, if so, whether any response was received.

The Bureau argues that any error to comply with notice requirements requires only a limited remand here. (See, e.g., *In re Brooke C.* (2005) 127 Cal.App.4th 377, 385.) Mother seeks reversal of the jurisdiction and disposition orders. In *In re Brooke C.*, the court discussed insufficient ICWA notice in the context of a dispositional order. The court concluded that an ICWA notice error is not jurisdictional, and therefore ordered a limited remand to the juvenile court for the agency to comply with ICWA notice requirements, with directions to the juvenile court depending on the outcome of such notice. (*Id.* at pp. 385-386.) We are aware that other courts have held that a violation of the ICWA constitutes jurisdictional error. (See *Nicole K. v. Superior Court* (2007) 146 Cal.App.4th 779, 781.) However, we are persuaded that *In re Brooke C.* states the better view—that the error here was not “jurisdictional” in the fundamental sense and that

¹ We note that a review hearing is currently set for December 10, 2013. The nature of this hearing is unclear from the record, which contains a notice and admonishment to mother stating: “REVIEW HEARING (W&I Code Section 366.26)[¶] Please be informed that if the subject minor cannot be returned to your home by the next hearing, the juvenile Court may terminate your parental rights towards the subject minor pursuant to California Welfare & Institution pursuant to Penal Code Section 366.26” [*sic*]. To the contrary, the service plan indicates services will continue until at least March 2014, and nothing at the disposition hearing indicated any recommendation was being made to terminate parental rights at the next review hearing or that such hearing was being held pursuant to section 366.26. In an abundance of caution, we have ordered any hearing pursuant to Welfare and Institutions Code section 366.26 be stayed, pending the juvenile court's determination that ICWA requirements have been met.

reversal is only appropriate where parental rights have been terminated. (*In re Brooke C.*, at p. 385; see *In re Jonathon S.* (2005) 129 Cal.App.4th 334, 340-343.) Appellant's parental rights were not terminated here. Consequently, the appropriate remedy is remand for ICWA compliance.

DISPOSITION

The jurisdiction and disposition orders challenged herein are affirmed, and the matter is remanded to the juvenile court with directions to comply with inquiry and notice provisions of the ICWA, if it has not already done so. After proper notice under the ICWA, if it is determined that this child is an Indian child and the ICWA applies to these proceedings, mother is entitled to petition the juvenile court to invalidate orders that violated the ICWA. (See 25 U.S.C. § 1914; Cal. Rules of Court, rule 5.486 [petition to invalidate orders].) Should any of the identified tribes determine that the child is an Indian child, or other information show the child to be an Indian child as defined by ICWA, the juvenile court shall conduct new jurisdiction and disposition hearings in conformity with ICWA.

Kline, P.J.

We concur:

Haerle, J.

Richman, J.